

Remarks

Claims 1, 3-17, 19-23 are now pending in the application. Claims 1, 3, 8, 17, and 19 have been amended. Favorable reconsideration of the application, as amended, is respectfully requested.

**I. ALLOWABLE SUBJECT MATTER**

Applicant acknowledges with appreciation the indicated allowability of claims 8-16 subject to being amended to independent form. Claim 8 has been amended in independent form herein. Therefore, independent claim 8 and its dependent claims are now believed to be in condition for allowance.

Applicant believes that other pending claims are also in condition for allowance for at least the reasons set forth below.

**II. REJECTIONS OF CLAIMS 1-7 AND 17-23 UNDER 35 U.S.C. §§ 102 AND 103**

Claims 1, 4, 17, and 20 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,325,489 ("Endo"). Claims 2, 3, 18, and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Endo in view of U.S. Patent No. 6,030,065 ("Fukuhata"). Claims 5-7, and 21-23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Endo in view of U.S. Patent No. 6,491,373 ("Fujita"). All pending claims are believed to be allowable for at least the following reasons. Withdrawal of the rejection is respectfully requested.

Independent claim 1 has been amended herein to recite all the limitations of previously submitted claim 2. Independent claim 17 has been amended herein to recite all the limitations of previously submitted claim 18. In the Office Action, claims 2 and 18 are rejected by a combination of the Endo patent and the Fukuhata patent.

It is respectfully submitted that the Endo patent should be disqualified as prior art in view of 35 U.S.C. § 103(c) or MPEP § 2146. The applicability of 35 U.S.C. § 103(c) is available to applications filed on or after November 29, 1999. Specifically, 35 U.S.C. § 103(c) provides:

"Subject matter developed by another person, which qualifies as prior art only under one or more subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

As applied to 35 U.S.C. § 103(c), the Endo patent contains subject matter developed by another person (i.e., the inventors of the present application and the Endo patent are different).

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Endo also qualifies as prior art under 35 U.S.C. § 102(e) since Endo was filed on June 26, 1998, which was before the Applicant's application filing date of December 21, 2001, and published under 35 U.S.C. § 122(b). Further, as evidenced by the Assignee designations in the Endo patent and Applicant's application, there is common ownership (i.e., Seiko Epson Corporation) of the subject matter disclosed in Endo and the claimed invention at the time the invention was made. That is, Applicant's own application and Endo were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person(s) or organization(s). Because Endo was used by the Examiner in an obviousness rejection under 35 U.S.C. § 103(a), the Applicant respectfully submits that the Endo patent be disqualified as prior art in accordance to MPEP. 706.02(1)(3) and that claims 1, 3-7, 17, and 19-23 are in condition for allowance. However, it should be noted that the submittal of Endo be disqualified as prior art in view of 35 U.S.C. § 103(c) or MPEP § 2146 should not be construed as an admittance on behalf of the Applicant of any obviousness.

For at least the reasons set forth above, the invention defined in independent claims 1 and 17, and their dependent claims is believed to be patentable over the cited art. Withdrawal of the rejections is respectfully requested.

### III. CONCLUSION

Applicant believes that all pending claims are in condition for allowance, and respectfully requests a Notice of Allowance at an early date. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 510-843-6200, ext. 245.

Respectfully submitted,  
BEYER WEAVER & THOMAS, LLP



Haruo Yawata  
Limited Recognition under 37 CFR § 10.9(b)

P.O. Box 778  
Berkeley, CA 94704-0778  
Tel: 510-843-6200, ext. 245

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**Expires: January 2, 2007**



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